# No. 15,801

IN THE

# United States Court of Appeals

## For the Ninth Circuit

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GLADYS E. LINCOLN GRAMM,
*Appellant,*

vs.

ELIZABETH LINCOLN, Executrix of the Last Will and Testament of Henry Lincoln, Deceased,
*Appellee.*

**Appeal from the United States District Court for the District of Idaho, Southern Division.**

## APPELLEE'S BRIEF.

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### JURISDICTION.

Appellee accepts the statement of jurisdiction so far as it permitted the lower Court to consider this matter by reason of diversity of citizenship. However, it is felt that the matters raised in this cause of action lie exclusively within the jurisdiction of the State Courts of Idaho, having previously been considered and passed upon by all of the Courts of the said State, including the Supreme Court of the State of Idaho in the matter entitled *Gladys E. Lincoln*

*Gramm v. Elizabeth Lincoln,* Supreme Court Idaho, 312 Pac. 2d 113 (reproduced in T.R. pages 30 to 38). In this connection the Constitution of the State of Idaho, Article V, Section 21, provides that "the probate Courts shall be Courts of record and shall have original jurisdiction in all matters of probate . . ." and the Idaho codes at Section 1-1202(7) provide that "the Probate Court has jurisdiction . . . to order and regulate all distributions of property or estates of deceased persons".

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## STATEMENT OF THE CASE.

### (A) History of Court Action.

This case began as a proceeding instituted by appellant in the Probate Court of Ada County, Idaho, by petition to vacate and set aside the decree of final distribution entered in said estate (T.R. p. 54, Para. XIV of Pretrial Stipulation). Appellant's petition was denied by the Probate Court and on appeal to the Idaho District Court the decision was affirmed. Whereupon appellant appealed to the Idaho Supreme Court which affirmed the order of the District Court (T.R. pp. 30-38).

While the appeal from the decree of final distribution was pending in the Idaho District Court, this case was filed in the lower Court under 15-609 of the Idaho Code.

After thus failing three times in the state Courts to overthrow the decree of final distribution by peti-

tion and appeal, appellant now seeks to set it aside by a collateral attack.

The appeal herein is from an order of the lower Court dismissing appellant's request for permission to file an amended complaint suing appellee in her individual capacity as well as in her representative capacity as executrix of her husband's estate. Both causes of action in the proposed amended complaint are based on the same facts and are actions at law brought pursuant to 15-609 of the Idaho code. The first cause of action seeks to recover judgment upon a creditor's claim against appellee as executrix of her husband's estate, the same cause of action as is stated in the original complaint. The second cause of action in the proposed amended complaint is grounded on the same facts and denominated "unjust enrichment". No claim for "unjust enrichment" has ever been presented to appellee either individually or otherwise.

**(B) Statement of Facts.**

Appellant lodged with appellee her alleged creditor's claim after the time limited for the presentation of such claims and did not obtain an order of the Probate Court extending the time for the presentation of claims. She did not even apply for such an order until long after the decree of final distribution had been made and entered (T.R. pp. 54-55, Para. XIII and XV of Pretrial Stipulation).

Appellant did not make any objection to the first and final account or the petition for final distribution filed in the Probate Court. She did not appear in said

Court personally or by counsel, until long after the decree of final distribution had been entered, although under Idaho Code 15-1118 it was incumbent upon appellant to appear in the Probate Court and file her objections to the first and final account and petition for final distribution.

The facts of this case are set forth in greater detail in the Pretrial Stipulation (T.R. pp. 46-57).

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## ARGUMENT.

### I. CREDITORS' CLAIMS MUST BE TIMELY PRESENTED.

#### (1) Claims Against Estates Must Be Presented or Sued Upon in Such a Way and at Such Time as Required by Local Law, Otherwise They Are Barred.

Under the law governing the administration of decedents' estates there are stated conditions when an executor or administrator must, perforce, disallow a claim. Section 15-604 Idaho Code, quoted at p. "d" of appellant's brief, compels an executor or administrator to disallow any claim not timely presented, although it does permit the probate judge, for good cause being shown, to order an extension for presentation if such extension is requested before a decree of distribution is entered.

Another condition appears in Section 15-610 Idaho Code, which states, in part:

> "No claim must be allowed by the executor or administrator, or by the probate judge, which was barred by the statute of limitations, at the time of the death of the decedent . . ."

Under that statute neither the personal representative nor the probate judge can allow such a claim, but must disallow it. Section 15-609 Idaho Code states:

> "When a claim is rejected, either by the executor or administrator, or the probate judge, the holder must bring suit in the proper court against the executor or administrator, within three months after notice of its rejection, if it be then due, or within two months after it becomes due, otherwise the claim is forever barred."

Where a claim, otherwise valid, must be rejected or disallowed by the executor or administrator, or by the probate judge, because of a statute of limitations, any rejected claimant might argue that the decedent, his estate, or an heir has been enriched—whether justly or unjustly. Precisely the same argument could be made in an action brought on a rejected claim six months or six years after notice of its rejection. But any such action must be brought against the executor or administrator, and within the period limited by statute, and not against any heir or heirs who might, arguendo, have been enriched by the amount of the rejected claim. The right to an action on a rejected claim is given and fixed by statute; it is a legal, not an equitable, action, and is exclusive.

**(2) The Cases Relied Upon by Appellant Fail to Support His Argument, Nor Do They Substitute a Theory of "Unjust Enrichment" for the Legal Requirements Respecting the Presentation of Creditors' Claims.**

If appellant's argument of unjust enrichment is sound, a suit in equity could be brought at any time, against any heir or heirs, and without any antecedent bother of filing a creditor's claim with an executor or administrator. It requires no considerable imagination to envisage what a shambles that theory would make of the orderly administration and distribution of decedents' estates, and of the statutes governing such administration and distribution, including the several statutes of limitation involved.

Because appellant has, at p. 15 of her brief, cited some Idaho cases in support of the unjust enrichment argument, we feel obliged briefly to discuss them. *Hixon v. Allphin,* 281 P. 2d 1042, 76 Idaho 327 (1955), related to restitution under a defaulted contract. *Madison v. Buhl,* 8 P. 2d 271, 51 Idaho 564 (1932), permitted the ward of a deceased guardian to bring an action against the heirs of his estate when, as distributees, they had received, as a part of his estate, the trust property properly belonging to the ward. The Court also reannounced the rule that it was unnecessary for the ward to file a creditor's claim for the simple reason that the property held by the decedent as trustee was no part of his estate. In *In Re Isaacson's Estate,* 285 P. 2d 1061, 77 Idaho 12 (1955), the lower Courts had held that a joint will created an irrevocable contract and rendered invalid a purported later will revoking his joint will, and that these

issues could be litigated in the Probate Court upon the offer of the subsequent will for probate. The Supreme Court reversed, holding that the Probate Court was without jurisdiction to litigate those issues.

At p. 21 of appellant's brief, three Idaho cases are cited to support the proposition that appellee owed some duty to appellant to see that appellant presented her claim in time. If there is such a rule the cited cases do not support it. *Burns et al. v. Skogstad,* 206 P. 2d 765, 69 Idaho 227 (1949), was a suit in equity to impress a trust upon the property of a deceased executor. The executor had fraudulently deceived the residuary legatees, not creditors, of the estate. *Gerlach et al. v. Schultz,* 244 P. 2d 1095, 72 Idaho 507 (1952), also was a suit in equity to impress a trust upon the property distributed to Schultz, who was also administrator of the estate, upon his petition alleging that he was the decedent's sole heir. Schultz' fraud not only was practiced on the Probate Court in alleging in his petition for final distribution that he was the sole and only heir, but he fraudulently deceived the other and nonresident heirs by informing them that the decedent left no estate. *Simonton v. Simonton,* 193 P. 386, 33 Idaho 255 (1920), did involve a creditor's claim. The claim was rejected by the administratrix, and proceedings were commenced against the administratrix in her representative capacity, and against her personally, on two causes of action in the same complaint. One cause was to compel the administratrix "to account for and inventory certain property alleged to belong to the estate and

not included in the inventory, and which she claims as her own, and to determine the title thereto. The second cause of action is to recover judgment on a claim which had been presented to the administratrix and disallowed. . . .'' There was no question as to the timeliness of presenting the claim.

It was contended further in the *Simonton* case that the causes of action were improperly joined, for the reason that the first was against the administratrix as an individual, and the second was against her in her representative capacity. To this the Court said:

> ''The position is not well taken. In reality the complaint states but one cause of action. The action, although arising out of a probate proceeding, is in principle essentially a creditor's bill in which appellant is seeking to establish the fact that she is a creditor of the estate and at the same time to reach funds which she claims should be subjected to the payment of the debt. In such a proceeding it is proper that respondent be made defendant, both as an individual and as administratrix of the estate of a deceased person.''

The Court further noted that:

> ''We are here called upon to decide only the question whether the creditor *under such circumstances as exist in this case* where the administratrix is adversely claiming property which the creditor alleges belongs to the estate may maintain the action, and this question we decide in the affirmative.'' (Emphasis added.)

In the instant case appellant does not claim that appellee is adversely claiming property allegedly be-

longing to the estate, but does claim that appellee has been unjustly enriched as distributee of the property of the estate because appellee, as executrix, did not pay appellant's alleged claim, and that the Probate Court did not order the payment of said claim, regardless of the statutory admonition both to appellant and the Probate Court. The circumstances here do not remotely compare to the circumstances appearing in *Simonton v. Simonton,* supra, and which, the Court explicitly stated, were the only circumstances upon which its decision rested.

None of the Idaho cases cited by appellant support her argument of unjust enrichment, nor do they suggest any departure from the statutory requirements that creditors' claims be timely presented. Appellant's cause of action and her proposed second cause of action constitute, essentially, a creditor's claim against the estate. The controlling statutes and decisions are those relating to, and interpreting, the presenting of creditors' claims; and none of these supports or gives any nourishment to appellant's arguments of unjust enrichment.

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## II. THE DECISION OF THE IDAHO SUPREME COURT GOVERNS IN THIS MATTER.

### (1) This Action Is an Attempted Collateral Attack on the Final Decision of the Idaho Supreme Court.

Appellant's proposed amended complaint was offered after the decision of the Idaho Supreme Court, 312 P. 2d 113 (T.R. pp. 30-38), and the second

cause of action pleaded therein was an attempt to get around the finality of that decision. This second cause of action is nothing more than a collateral attack on the order of the Probate Court (See par. V of the second cause, at p. 42 of transcript of record).

In its decision, supra, the Idaho Supreme Court said:

> "Probate courts are courts of record with original jurisdiction in all matters of probate and settlement of estates of deceased persons, Idaho Const. Art. V. Sec. 21, and their orders and judgments in regard to such matters cannot be collaterally attacked and can be reviewed only by proper motion in such courts or by appeal from their decisions." (See p. 36 of Transcript of Record.)

In *O'Neill v. Potvin,* 13 Idaho 721; 93 P. 257, a collateral attack upon a judgment is defined:

> "The attack is collateral if the action or proceeding has an independent purpose and contemplates some other relief or result than the mere setting aside of the judgment, although the setting aside of the judgment may be necessary to secure such independent purpose."

The case of *Flynn v. Driscoll,* 38 Idaho 545; 223 P. 524, is an exhaustive study of the probate law of Idaho. It holds that suit on a rejected claim under 15-609 Idaho Code, if it be a demand for money, is an action at law, affirming the decision of the Court on that point in *Idaho Trust Co. v. Miller,* 16 Idaho 308; 102 P. 360. It further holds, inter alia:

> "Probate law is a creature of statute. Each point thereof is governed by the statute in force in the particular state, and little aid can be gained from text writers or from decisions of other states where the statutes are not identical, or at least analogous."

We submit that the state Court has disposed of both causes of action in appellant's proposed amended complaint, on the merits and on the law, and that the order of the lower Court, here, was and is correct and proper. This appeal, therefore, should be dismissed.

**(2) The Decision of the Idaho Supreme Court Was Properly Based on Local Law, Which Controls in This Case, and Is Final and Conclusive.**

On page 15 of appellant's brief it is contended that the decision of the Idaho Supreme Court is not res judicata. The reasons assigned for the contention are not convincing. Regardless of the vantage point from which one examines it, the decision confirms or establishes the local law, and we are proceeding upon the theory that this Court will follow the local law.

In that respect we invite the Court to note the language of the Idaho Statute barring belated claims (15-604, Idaho Code). The statute provides that a claim not presented within the time *limited in the notice to creditors* is barred forever. The statute does not provide that a claim not presented before the *decree of distribution is entered* is barred. Neither does the proviso. The proviso is construed and expounded by the Supreme Court in *Penn Mutual Life Ins. Co. v. Beauchamp,* 57 Idaho 530; 66 P. 2d 1020.

A belated claim of a non-resident creditor is of no validity unless its presentation be preceded or accompanied by an order of Court permitting it to be presented. Under 15-607 Idaho Code only claims that are *presented* to the executor or administrator need be acted upon by him. A belated claim is a nullity, having no more validity than a blank sheet of paper, which the personal representative is free to ignore. Even if timely presented it need not be acted upon for sixty days, and if it is rejected it need not be reported to the Probate Court. Under 15-1116 Idaho Code notice must be given, by posting or publication, as the Court may direct, and for such time as may be ordered, of the hearing for a final settlement, and under 15-1118 Idaho Code it is provided:

> "On the day appointed, or any subsequent day to which the hearing may be postponed by the court, any person interested in the estate may appear and file his exceptions in writing to the account and contest the same."

Under 15-604 Idaho Code a personal representative has no authority to pay claims presented after the time limited for their presentation has expired.

*Schneeberger v. Frazer,* 36 Idaho 737; 213 P. 568;

*Flynn v. Driscoll,* 38 Idaho 545; 223 P. 524;

*Lundy v. Lemp,* 32 Idaho 162; 179 P. 738;

*Blake v. Lemp,* 32 Idaho 158; 179 P. 737.

The burden of appellant's complaint is that she did not receive justice in the state Courts because the Probate Court is not a court of general equity juris-

diction. The assumption, it is thought, is a non sequitur.

The Probate Court, under 5-905 Idaho Code, had exclusive jurisdiction to make and enter the decree of final distribution and to correct said decree, if warranted, by vacating and setting it aside or refusing so to do, either upon a timely motion being made, or by appeal.

*Horn v. Cornwall,* 65 Idaho 115; 139 P. 2d 757;
*Snow v. Probate Court,* 60 Idaho 611; 95 P. 2d 844;
*Moyes v. Moyes,* 60 Idaho 601; 94 P. 2d 782.

Both the motion to vacate and the appeal from the decree were grounded upon the same alleged errors as those specified in appellant's motion to amend the complaint. The Probate Court had jurisdiction to hear and determine those matters, and its decision was affirmed by the State District Court and the Supreme Court.

> "While probate courts are not courts of general equity jurisdiction, yet, in matters falling within their jurisdiction they possess many of the powers usually exercised by courts of equity."
> 21 C.J.S. Sec. 302, p. 542.

> "The jurisdiction conferred . . . is statutory and yet all probate matters are equitable in their nature."
> *Walker v. Cook,* 128 N.E. 584; 294 Ill. 294.

The appellee's position may be stated to be that the decision of the Supreme Court is right, but whether

right or wrong it is final and conclusive, and appellant is bound by it. Therefore, we shall spend very little time defending the decision. We shall confine our argument largely to showing that what the appellant undertook to accomplish in the lower Court was, under the guise of an amendment, a retrial of the matters decided against her by the state Courts.

It is important to remember in connection with this matter that:

> "No principle is more firmly settled than that equity will not come to the aid of one who, through his own delay and own fault, has lost the remedy which the law provided."
>
> *DeMattos v. McGovern,* 25 C.A. 2d 429; 77 P. 2d 522.

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### III. APPELLANT CANNOT CLAIM TO HAVE BEEN MISLED BY MR. PAINE'S LETTER OF FEBRUARY 9, 1956.

The next point that appellant labors is that she was misled by a letter (T.R. pp. 51-52) which deceived the Probate Court and the appellant to her prejudice. We cannot say that appellant was not deceived or misled by the letter, but we can say that the charge is an insult to appellant's intelligence—that the letter was not calculated or likely to deceive any ordinary person, or even an infant. The point is stressed by appellant as though appellee had withheld information from her that was peculiarly within the knowledge of appellee, whereas the notice to creditors was

published in a Boise newspaper pursuant to an order of the Probate Court. The desired information could have been had in an hour through the offices of local counsel or even a layman. Instead appellant chose to make appellee run errands for her.

The repeated attempts of appellant to make a scapegoat of appellee by blaming her for appellant's negligence in the face of the letter and the decision of the Supreme Court further exemplifies, it is thought, that necessity knows no law.

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**IV. THERE IS NO INCONSISTENCY BETWEEN THE DECISION OF THE IDAHO SUPREME COURT AND THE PRETRIAL STIPULATION.**

Appellant's specification of error No. XII is to the effect that the Supreme Court's decision contradicts the stipulation of facts (T.R. pp. 46-58) in this: That according to the stipulation the alleged claim was *presented* ten days before the decree of distribution was entered, whereas, the decision of the Supreme Court rules that "neither the affidavit mentioned in the section, nor claim was presented in this case within the time prescribed." The two statements are neither inaccurate nor contradictory. The question is not whether the claim was presented before the decree of distribution was entered, but whether it was presented before the time limited in the notice to creditors for the presentation of claims.

The last sentence of the specification, namely, that the time for filing an affidavit is not definite is a mere quibble. The provision is that the requisite affidavit must be filed before the decree of distribution is entered. The decision correctly states that neither was the order applied for nor was the claim presented within the time prescribed.

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**V. NO SHOWING HAS BEEN MADE THAT THE NOTICE REQUIRED BY IDAHO LAW FOR THE PRESENTATION OF CREDITORS' CLAIMS IS UNREASONABLE OR IS A DENIAL OF DUE PROCESS.**

On page 16 of appellant's brief it is argued that the notice provided by the statutes of Idaho for in rem proceedings is insufficient and unreasonable. What notice is referred to, and why it is deemed insufficient or unreasonable, is not stated. To the best of our knowledge the statutes involved are part of the local law. However that may be, appellant had more than constructive notice of the proceedings of which she complains; that notice was provided by the correspondence had between her and the Probate Judge (T.R. pp. 47-48).

In *Chandler v. Probate Court,* 26 Idaho 173; 141 P. 635, the Idaho Supreme Court rules:

> "* * * it was incumbent upon the petitioner, who, in common with everybody else, had the only notice of the hearing on the petition for final settlement which was required by law, * * * to

> appear in the probate court and file their exceptions or make their objections. * * * They knew whether or not they were going to dispute the action of the administrator in failing to allow their claim; they knew that the settlement of the estate was pending in the probate court; they had statutory notice of the petition for final settlement. Under these circumstances their failure to keep track of the proceedings and file their exceptions was such a failure to protect themselves in the way provided by law as constittues laches, * * *"

Section 5600, Revised Codes, cited in *Chandler v. Probate Court,* supra, pp. 637-8, is now 15-1118 Idaho Code.

At page 16 of appellant's brief it is asserted that no action was taken on appellant's alleged claim, "either by allowance or rejection thereof." This is a rather startling contention in view of the decision of the Supreme Court and the allegation in appellant's complaint herein: "That on the 9th day of February, 1956 defendant (appellee), as such executrix, rejected plaintiff's (appellant's) said claim" (T.R. pp. 4-5).

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**CONCLUSION.**

For the above stated reasons, we submit that principles of unjust enrichment cannot apply, that the final decision of the Idaho courts is correct and determines the result in this case and that there has been no fraud or violation of due process. Accord-

ingly, the action of the lower court herein should be upheld.

Dated, San Francisco, California,
February 24, 1958.

Respectfully submitted,
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